

MINUTES

MINUTES OF THE REGULAR SESSION OF THE MAYOR AND COUNCIL OF THE CITY OF BISBEE, COUNTY OF COCHISE, AND STATE OF ARIZONA, HELD ON TUESDAY, APRIL 2, 2019 AT 7:00 PM AT THE CITY HALL BUILDING, 915 S. TOVREAVILLE ROAD, BISBEE, ARIZONA.

THE MEETING WAS CALLED TO ORDER BY MAYOR SMITH AT 7:00PM.

ROLL CALL

COUNCIL

Councilmember Gabe Lindstrom, Ward III	Excused
Councilmember Joni Giacomino, Ward II	
Councilmember Bill Higgins, Ward I	
Mayor David M. Smith	
Councilmember Leslie Johns, Ward I	
Councilmember Joan Hansen, Ward II	
Councilmember Anna Cline, Ward III, Mayor Pro Tempore	

STAFF

Stephen Pauken, Interim City Manager
Ashlee Coronado, City Clerk
George Castillo, Fire Chief

CITY ATTORNEY

Britt Hanson

INVOCATION: Mayor Smith asked for a moment to reflect on this incredible beautiful day and all the reasons we live in Bisbee, Arizona.

PLEDGE OF ALLEGIANCE

MAYOR'S PROCLAMATIONS AND ANNOUNCEMENTS:

- Mayor Smith stated that he will be gone for the next meeting and Mayor Pro Tempore Cline will be presiding over the meeting.

CALL TO THE PUBLIC

- Cado Daily, Bisbee resident thanked the Council and all the people that helped make the Return of Turkey Vultures such a success this year. They raised \$1,500.00 for the pool which was only 10% of what the annual responsibility was for the pool. She also thanked the Bisbee Arts Commission for providing some of the funding and Carol Dodd and Josh White (Public Works) were fantastic and Jason and Alison from the Library. She wanted the parking situation addressed.

THE FOLLOWING ITEMS WERE DISCUSSED, CONSIDERED AND/OR DECIDED UPON AT THIS MEETING:

GENERAL BUSINESS:

1. ACCOUNTS PAYABLE: Subject to availability of funds

MOTION: Councilmember Cline moved to approve the accounts payable in the amount of \$214,501.91
SECOND: Mayor Smith

Mayor Smith asked if there were any questions.

Councilmember Giacomino asked about 10-70-22000 Water: Cemetery Plot \$205.68. We really need to disconnect. Mayor Smith asked Mr. Pauken to look into this.

Councilmember Cline asked about 10-55-22000 Water: City Hall \$651.77. Why was this so high. Mr. Pauken said that we have a 4-inch meter for this facility and we have contacted Arizona Water about seeing if they could put in a smaller meter.

Councilmember Cline asked about 10-55-46100 Fire Replacement Expenses: Damage Control LLC; lodging & per diem for CL \$34,464.00. What was this. Mr. Hanson, City Attorney stated that it was the last payment due to DC Restoration. It was Per Diem for all the people that they brought in.

Councilmember Cline also asked about 10-62-21000 Electric \$720.08. Mr. Pauken will have to look at the bill and get back to the Council.

Councilmember Cline asked about the total of \$92,608.13 that was listed under the Senior Center. Ms. Coronado, City Clerk stated that was for the total for the entire general fund.

Councilmember Giacomino asked about 10-80-22000 Water: Grassy Park \$190.73. She asked if they had been watering was it why it was so high. Mayor Smith said yes. Mr. Pauken said he would look into this.

MOTION PASSED: UNANIMOUSLY

2. Approval of the Consent Agenda

- A. Approval of the Minutes of the Regular Session of Mayor and Council held on March 5, 2019 at 7:00 pm.
Ashlee Coronado, City Clerk
- B. Approval of the Resignation of Michael McPartlin from the Planning and Zoning Commission.
Ashlee Coronado, City Clerk
- C. Approval of the Park, Facility, and Right –of-Way Use Permit for the Bisbee Farmers Market for the use of Lower Vista every Saturday from April 2019 through April 2020; 7:00 am to 2:00 pm, this includes set-up and breakdown.
Ashlee Coronado, City Clerk
- D. Approval of the Park, Facility, and Right –of-Way Use Permit for the Use of City Park Band Stand for Shakespeare in the Park to be held on Saturday, April 13, 2019 from 3:00 pm to 11:00 pm, this includes set-up and breakdown.
Ashlee Coronado, City Clerk
- E. Approval of a Liquor License Application for Remote Tasting Room for Passion Cellars, LLC Located at 2 Main Street #8, Bisbee, Arizona; Arlene Domanico, Applicant.
Ashlee Coronado, City Clerk

Mayor Smith asked if Council wanted any of these pulled for discussion.

MOTION: Councilmember Cline moved to approve Consent Agenda items 2A-2E.

SECOND: Councilmember Johns

ROLL CALL VOTE:

AYES: Councilmember Giacomino, Higgins, Johns, Hansen, Cline and Mayor Smith.

NAYS: 0

MOTION PASSED: AYES -6; NAYS -0

OLD BUSINESS

NEW BUSINESS

- 3. Discussion and Possible Approval to Dissolve the Interim City Manager Ad Hoc Committee.
Joni Giacomino, Councilmember Ward II

MOTION: Councilmember Giacomino stated that we have an interim City Manager and that this needed to be dissolved so that there will be no opportunities for misstep.

SECOND: Mayor Smith

MOTION PASSED: UNANIMOUSLY

- 4. Discussion and Possible Approval of an Agreement that Authorizes Mule Mountain Pest Control to Provide Pest Management Service to the City Hall Buildings located at 915 S. Tovreaville Road, Bisbee, AZ.
Ashlee Coronado, City Clerk

Ms. Coronado said that before Council was an annual contract for Mule Mountain Pest Control to provide pest control services for the buildings. This will cover all three (3) buildings and the total cost per year will be \$1,440.00.

MOTION: Councilmember Higgins moved to approve an agreement that authorizes Mule Mountain Pest Control to provide Pest Management Services to the City Hall Building located at 915 S. Tovreaville Road, Bisbee, AZ.

SECOND: Councilmember Hansen

ROLL CALL VOTE:

AYES: Councilmember Giacomino, Higgins, Johns, Hansen, Cline and Mayor Smith.

NAYS: 0

MOTION PASSED: AYES -6; NAYS -0

- 5. Discussion and Possible Approval of an Emergency Repair of a Flygt Pump for Mule Gulch Lift Station to include repair, services, parts and labor totaling \$9,876.13 from Phoenix Pumps, Inc.
Stephen Pauken, Interim City Manager

Mr. Pauken said that the collection employees needed to repair one of the pumps at the Mule Gulch Lift Station. They discussed what they would do if they had an outright failure for those pumps. There was a point in time a good many years ago that we actually had a spare pump for emergencies. What they would like to do was get the new pump and repair this pump in case there was a failure.

MOTION: Councilmember Johns moved to approve the emergency repair of a Flygt Pump to include repair, services, parts and labor totaling \$9,876.13 from Phoenix Pumps, Inc.

SECOND: Councilmember Cline
MOTION PASSED: UNANIMOUSLY

6. Discussion and Possible Approval to Purchase a Pump from Phoenix Pumps, Inc. for the Mule Gulch Lift Station for a Total Cost of \$13,469.65.
Stephen Pauken, Interim City Manager

Mr. Pauken said that this pump would be put in place immediately upon arrival.

Councilmember Hansen asked if this was sole source. Mr. Pauken said that this was the brand of pump and this was the vendor.

MOTION: Councilmember Cline moved to approve to purchase a pump from Phoenix Pumps Inc. for the Mule Gulch Lift Station for a total cost of \$13,469.65.
SECOND: Councilmember Hansen
MOTION PASSED: UNANIMOUSLY

7. Discussion and Possible Approval to Repair Pump at Phoenix Pumps, Inc. for the Garage Lift Station for a Total Cost of \$3,024.13.
Stephen Pauken, Interim City Manager

Mr. Pauken said that this was to repair the pump at the garage lift station.

MOTION: Councilmember Hansen moved to approve to repair pump at Phoenix Pumps, Inc. for the Garage Lift Station for a total cost of \$3,024.13.
SECOND: Councilmember Johns
MOTION PASSED: UNANIMOUSLY

8. Discussion and Possible Approval of a Fire Protection Services Agreement.
David M. Smith, Mayor
George Castillo, Fire Chief

Mayor Smith indicated that he and Chief Castillo would be discussing. This was a project that the Chief and he had been working on for some time probably close to six (6) months. What this was the Banning Creek Area that should there be a fire we would be responding and charge accordingly. The Banning Creek FireWise had requested for us to set a contract up with them individually to provide fire protection services on a subscription basis. What this meant was that if their house caught on fire and they are a subscriber we would respond and put that fire out., basically for the money they have paid us through that contract rather than charging them personally for that.

The money that we would be getting in ahead of time would be placed in a line item for the fire department specifically for wildland fire gear. So they could keep current on the gear that was needed for wildland fire fighting and that this was a good way for us to actually pay for without it coming out of the general fund.

Councilmember Cline asked if the Chief had made contact with the residents over there to get an idea of how many would sign up. Mayor Smith said that they have had several meetings with FireWise and there were a number of people interested in this project. Chief Castillo stated that once they have subscribers they would be mapping the area out so when a call comes in they can look to see if they were under agreement.

MOTION: Councilmember Johns moved to approve the Fire Protection Services Agreement with the Banning Creek FireWise Program Participants.

SECOND: Councilmember Cline

ROLL CALL VOTE:

AYES: Councilmember Giacomino, Higgins, Johns, Hansen, Cline and Mayor Smith.

NAYS: 0

MOTION PASSED: AYES -6; NAYS -0

- 9. Discussion and Possible Approval to Waive Attorney/Client Privilege as to the February 14, 2019 email from the City Attorney to the Council Regarding the Resignation of Robert Smith and the February 22, 2019 email from Steve Coleman on the same subject.

Britt Hanson, City Attorney

Mr. Hanson stated that as set forth in the council action form this generated from the February 12th meeting in which the Council accepted Mr. Smith’s offer of resignation in lieu of termination, but declined to accept his fourteen (14) conditions placed on that offer.

An agenda item went before Council to either accept Mr. Smith’s resignation with all his conditions attached to it or to go through the termination process provided in the City Charter. Subsequently the Council did approve that. Then someone sent a letter to the Attorney General’s Office saying that the City had misused funds by paying Mr. Smith for two (2) weeks after the February 12th meeting. It certainly would help for the Attorney General to know why he was kept on the payroll for another two (2) weeks. By release of that letter and people in town where wondering about it. He thought it would be helpful for people to understand it. He went on to say that ordinarily he would be reluctant to advise a public body or any other client to release something that was attorney/ client privilege, but because the Council went ahead and did the termination at the subsequent meeting. He didn’t think there was anything in the letter that would cause any additional liability to the City.

Donna Pulling, Bisbee resident stated that she was one of the people that filed a complaint with the Attorney General’s Office resulting from the March 5th meeting and the February 12th meeting. The issue with the resignation itself has never been addressed. She said that the disclosure of this email would be helpful in making a decision as to why Council voted to except Mr. Smith’s resignation but it doesn’t rectify the problem and until the action on the February 12th meeting was put back forward no other action should be taken.

MOTION: Councilmember Cline moved to Waive attorney/client privilege as to the February 14, 2019 email from the City Attorney to the Council regarding the resignation of Robert Smith and the February 22, 2019 email from Steve Coleman on the same subject.

SECOND: Councilmember Johns

ROLL CALL VOTE:

AYES: Councilmember Giacomino, Higgins, Johns, Hansen, Cline and Mayor Smith.

NAYS: 0

MOTION PASSED: AYES -6; NAYS -0

- 10. **Ratification Pursuant to A.R.S. § 38-431.05, of Actions taken on March 5, 2019. The Purpose of the item is to Validate an earlier action by the Mayor and Council Regarding the Adoption of Resolution R-19-05 Stating the Councils Intent to Terminate City Manager Robert Smith Pursuant to Charter Section 3.09.**

Britt Hanson, City Attorney

Mr. Hanson said sort of on the same subject on the March 5th meeting the wording of the agenda item was Discussion and Possible Action Regarding Employment Status of Robert Smith. The reason it was worded that way rather than more specifically was that two (2) options were laid out to the Council at that meeting it could be to accept his resignation on the terms that he supplied or to go through the termination process according to what's laid out in the City Charter. The Council chose to go through the termination process that was laid out in the City Charter.

Someone filled an open meeting law complaint with the Attorney General's office on that. He doesn't think it was anything to be concerned about however, the legislator in its wisdom set out a process to ratify agenda items to get rid of any open meeting law issues that might be out there. So whether or not the Attorney General might be concerned about some open meeting law issue by ratifying today you get rid of that open meeting law issue. He encouraged the Council to ratify the decision. He gave the words for the motion to be made. This was just ratifying the decision that was made on March 5th and so that decision would then stand from that day.

Donna Pulling said that the Attorney General sent a letter on March 13th addressing the complaint that herself and another person had filed in regards to the termination. The Attorney General was asking for the minutes of the executive sessions of February 5th, February 12th and March 5th and the minutes of those meetings. Until the Attorney General receives these minutes and makes its findings it was premature to ratify any legal action taken by Council regarding the termination.

Mr. Hanson addressed Ms. Pulling's point that it wasn't premature that the statutory process gives thirty (30) days to ratify. That time was about to expire.

Donna Pulling said that in that regards A.R.S 38-431.05 says that the Council does have thirty (30) days after the discovery of the violation or after such discovery should have been made by exercising reasonable diligence. It was by the City Attorneys own admission that he knew of the problem as early as February 15th by email to the Council and again on February 22nd by email from Mr. Stow regarding the February 12th's decision therefore it has been forty-five (45) days since the Council knew about this.

Mr. Hanson said that it wasn't the February 12th meeting for this issue it was the March 5th for this issue.

Donna Pulling said according to the Attorney General's letter there was a possible open meeting violation that the City failed to properly notice the public of the intention to terminate the employment of City Manager Smith. The possible open meeting violation and likely a close call caused by discussion of employment status could also have been included for reconsideration of the resignation that happened on February 12th. So, according to the Attorney Generals findings they are looking at the February 12th resignation meeting. She asked that this item be tabled until the investigation by the Attorney General was complete.

Mr. Hanson commented that if in the off chance that the Attorney General found an opening meeting law violation on March 5th that would mean that decision of the Council could then be voided and Mr. Smith would then be paid for the time since the termination.

MOTION: Councilmember Higgins Pursuant to A.R.S. 38-431.05, moved to ratify the adopting of Resolution 19-05 stating the Council's intent to terminate City Manager Robert Smith pursuant to Charter section 3.09.
SECOND: Mayor Smith

Councilmember Giacomino asked if Mr. Hanson could say specifically why they were doing this. Mr. Hanson said that there had been a complaint made to the Attorney General and incase the Attorney General would find a violation this cures that violation. It cures the violation because the statute requires everything be done so if the public had any question about what action was going to be taken at the March 5th meeting which they would

have if they read the council action form because it laid out the two (2) options, but in case there was an issue it takes those issues off the table.

Councilmember Giacomino asked what would happen if we don't do this. Mr. Hanson said that if we don't ratify it nothing, it just would go forward to the Attorney General and we would see what would happen.

Councilmember Giacomino asked what would happen if the Attorney General comes back that we are in violation open meeting law. Mr. Hanson stated there were several options the Attorney could take no action what so ever, require open meeting law training, and the worst result they void the action taken at that meeting. In this case the termination of Mr. Smith. It would be voided and he would not be terminated.

Councilmember Cline asked if that was the situation wouldn't he get back pay. Mr. Hanson said that it would be a legal situation he would be paid for that time period. He would be back on the payroll. If he was not terminated and the resignation was not excepted with the conditions he placed on it and there was no action from the Council, he would be back on the payroll.

Councilmember Cline stated that we would have to start the process all over again. Mr. Hanson said that we would have to start the process all over again.

Mayor Smith said that what this action was, was not revisiting whether Mr. Smith was terminated or not terminated this was simply in the event that the Attorney General decided that there was an open meeting law violation by Council ratifying that decision it takes that away.

Mr. Hanson stated that was correct.

Councilmember Cline asked if by ratifying this decision did we have to go back and rescind the decision not being made to accept the resignation. Mr. Hanson stated no Council voted to make his letter to the Council on that subject waived attorney / client privilege, but the action that was taken at the February 12th meeting accepting his resignation but not any of his conditions was just void. We don't have to rescind something that was never solid in the first place.

Mr. Hanson stated that today's agenda item had nothing to do with rescinding that and it didn't have anything to do with reconsidering whether to terminate or anything like that it was just ratifying a decision the Council already made.

Councilmember Johns said that the letter does ask for the February 12th minutes. Mr. Hanson said that he wasn't saying they weren't but there are multiple issues here, but what he was trying to do tonight was to ratify the decision that was made on March 5th.

ROLL CALL VOTE:

AYES: Councilmember Giacomino, Higgins, Hansen, Cline and Mayor Smith.

NAYS: Councilmember Johns

MOTION PASSED: AYES -5; NAYS -1

11. Discussion and Possible Action Regarding Further Recommendations on the Concertina Wire Along the U.S. Mexican Border.

David M. Smith, Mayor

Mayor Smith said that this was an item brought forward we heard Ms. Gail Covington McBride speak and she has asked the Council to do something further rather than just the Resolution that we put forward. Mr.

Covington McBride was not here tonight. He didn't know what that further was, but he did put it on the agenda at her request.

Councilmember Giacomino asked if this could be tabled. Mr. Pauken said that she would not be available for a Council meeting in April.

MOTION: Councilmember Johns moved to table this item until May 7th.

SECOND: Councilmember Higgins

MOTION PASSED: UNANIMOUSLY

12. City Manager's Report:

- Other current events (No Discussion)
- Mr. Pauken gave an update on the Budget
- Mr. Pauken gave an update on the City Manager Search
- Mr. Pauken gave an update on the Public Works Director Search
- Mr. Pauken gave an update on the TinTown Paving Project

COUNCIL COMMENTS OR FUTURE AGENDA ITEM SUGGESTIONS: (Council members may suggest topics for future meeting agendas, but Council will not here discuss, deliberate or take any action on these topics.):

MOTION: Councilmember Higgins moved to adjourn the meeting.

SECOND: Councilmember Johns

MOTION PASSED: UNANIMOUSLY

ADJOURNMENT: 7:52 PM

Anna Cline, Mayor Pro Tempore